

Notice of Allowability

Application No.

09/992,491

Examiner

Gina C. Yu

Applicant(s)

HAHN ET AL.

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed on 2/28/07 and telephone interview on 5/17/07.
2. ☒ The allowed claim(s) is/are 1-18, 20, 26-34, 36, 38, 40-54, 56, 62-65, 69-77, renumbered to claims 1-59.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892).
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 4/2/07
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 5/17/07, 6/19/07.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Lisa Griffith on May 16, 2007.

The application has been amended as follows:

Cancel claims 66-68 and 78.

ELECTION/RESTRICTIONS

Claims 1, 3, 26, 27, 33, 34, 36, 38, 42-45, and 71-74 are allowable. The election requirement, as set forth in the Office action mailed on September 10, 2002, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The election requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 2, 4-18, 20, 28-32, 41, 46-54, 56, 62-65, directed to vehicles other than lotion formulations, are no longer withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present

application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

REASONS FOR ALLOWANCE

Claims 1-18, 20, 26-34, 36, 38, 40-54, 56, 62-65, 69-77 are allowed.

The following is an examiner's statement of reasons for allowance:

The terminal disclaimer filed on February 28, 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Pat. No. 5716625, 5804203, 5958436, and 6139850 has been reviewed and is accepted. The terminal disclaimer has been recorded. Obviousness double patenting rejections as indicated in the previous Office action dated November 30, 2006 are withdrawn in view of the terminal disclaimer.

Claim rejection made under 35 U.S.C. § 102 (b) as being anticipated by Bristow et al. (EP 0346957) as evidenced by Poisoning and Drug Overdose (2004) is withdrawn in view of claim amendment made by applicants. The prior art is directed to a dentifrice composition comprising 3 % of strontium acetate (water soluble divalent strontium cation) in a topically suitable vehicle. The composition does not comprise an irritant ingredient comprising an alpha-hydroxy acid, and examiner takes the position that, since the composition is used for sensitive teeth, there would be no reasonable

motivation for a skilled artisan to combine the composition with alpha hydroxy acids, which are conventionally known as keratolytic agents for skin.

Tanaka (US 5470563) also does not anticipate nor does it render the claimed invention obvious, as the reference fails to teach a skin irritation reducing salt comprising aqueous-soluble strontium cation. While Example 5-1 contains strontium sulfide as a depilatory agent, the strontium cation here does not meet the limitation of the instant claim 69, since the prior art uses polyoxyalkylene-modified organopolysiloxane to reduce skin irritation of the depilatory agent. Furthermore, according to evidence provided by applicants, strontium sulfide is a known skin irritant. See Cameo Chemical Data Sheet, Health Hazard.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

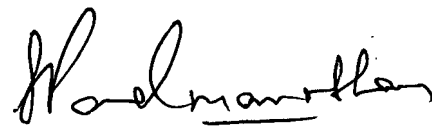
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina C. Yu
Patent Examiner



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER